IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION No. 3058 of 1996

Between:

M.A. Mazeed
Nirmal English Medium High School, Nirmal, Adilabad District.

..... PETITIONER

AND

1 The District Educational Officer, Adilabad.
2 The Secretary-cum-Correspondent, Nirmal English Medium

High School, Nirmal, Adilabad District.
3 The Accountant General, Indian Audit & Accounts Department,
Near Secretariat, A.P., Hyderabad.
4 Director of School Education,
Near Secretariat, A.P., Hyderabad.
5 The Principal Secretary, School Education Department,
A.P. Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to direct the respondents to sanction death-cum-retirement gratuity to the petitioner w.e.f. 1-11-89 by taking into consideration of service rendered from the date of appointment after declaring the action of the respondents in rejecting the same through their letter No. PV2/IV/
M-150/SP/172/93-05, dt. 26-10-95 when sanctioning the same to one Sri M.A. Rasheed is similarly placed is discriminatory, illegal and arbitrary.

Counsel for the Petitioner: MR. B.SUDHAKAR REDDY & NEERAJA REDDY

Counsel for the Respondent Nos.1, 4 and 5 : GP FOR SCHOOL EDUCATION

The Court made the following :

ORDER :

A retired Headmaster of the Nirmal English Medium High School, Nirmal, Adilabad District, has filed this writ petition for a direction to the respondents to sanction death-cum-retirement Gratuity from 1-11-1989 by duly reckoning the service rendered by him from the date of his initial appointment and for a declaration that the rejection of his claim by proceedings dated 26-10-1995 while sanctioning such benefits to one Sri M.A.Rasheed, who is similarly placed, is discriminatory.

The case of the petitioner is as under:

(a) The second respondent School was established in 1960 and obtained recognition from the State Government;

(b) The petitioner was appointed as the Headmaster of the School on 1-6-1964 after a due process of selection at a time when the School under private management and was not admitted to grant-in-aid;

(c) The School was admitted to grant-in-aid with effect from 1-9-1985 *qua* G.O.Ms.No.369, Education (SSC) Department, dated 14-8-1986. By this Government Order fifteen posts were admitted to grant-in-aid including the post of Headmaster;

(d) Grant-in-aid was sanctioned in G.O.Ms.No.237, Education, dated 27-5-1986;

(e) The petitioner's appointment and of all the other staff members of the School were approved from the dates of their initial appointment i.e., 1-6-1964 by the proceedings of the fourth respondent
dated 13-3-1990;

(f) On attaining the age of superannuation, the petitioner retired from service at the age of 58 years on 31-10-1989;

(g) The petitioner's pension papers were submitted to the first respondent by the second respondent. The first respondent forwarded the papers for scrutiny and verification to the third respondent. The third respondent by letter dated 7-8-1995 called for certain clarifications and the petitioner's pension papers were resubmitted together with the clarifications;

(h) However, the third respondent by letter dated 26-10-1995 declined accord of pension to the petitioner on the ground that he had less than five years of service and was thus entitled to only service gratuity of Rs.7,630/- in lumpsum. The third respondent's proceedings recorded that the petitioner was also not entitled for the benefit of death-cum-retirement Gratuity as he had not completed five years of service.

On the above factual basis, the petitioner contends that as his appointment as Headmaster with effect from 1-6-1964 was approved by the fourth respondent, he is entitled to count the entire period of service since 1-6-1964 for grant of pensionary benefits. He also contends that one Sri M.A.Rasheed, a Junior Assistant in the second respondent School, who was appointed along with him on 1-6-1964 and retired on 30-10-1990, was granted pension while illegally denying the said benefit to him.

Nowhere in the affidavit has the petitioner pleaded the statutory or legal basis for his

claim for pension or under which statutory provision he is entitled to count the entirety of his service from 1-6-1964 for the purpose of pensionary benefits. As the burden is on the petitioner to establish the legal basis for his claim, which he has failed either to plead or establish before this Court, this Court is not able to adjudicate upon or grant the reliefs claimed by the petitioner.

The first respondent has filed a counter affidavit reiterating the sequence of events alluded to by the petitioner in the writ petition. The substratum of the answering respondent's contention is that the third respondent is the authority for release of pension and if he has not granted pension to the petitioner, the answering respondent is helpless.

At the hearing of the writ petition, the learned Government Pleader for School Education Sri Prabhakar has submitted that there is an extant legislation, the 'Andhra Pradesh Private Aided Educational Staff (Regulation of Pay) Act, 2000' (for brevity 'the Act') which disentitles the claim of the petitioner for counting of his pre-aided service for the purpose of pensionary benefits. Sections 2 and 3 of the Act being relevant and material are extracted hereunder.

> **2. Eligible service for Government Schemes and Pension:-** Every employee of private aided educational institution shall, from the date of approval of his appointment in a post duly admitted to grant-in-aid be eligible to count his service rendered after such date of approval for fixation of his pay and also his pension under the schemes formulated, made applicable or extended to the employees of private aided institutions from time to time.

> **3. Abatement of Claims:-** (1) Notwithstanding anything contained in any rule, order, decree or any judgment of any Court, Tribunal or other authority, no employee of a private aided educational institution shall claim to count the service rendered, or as the case may be, the increments drawn in the respective post prior to the date of approval of his appointment in the post duly admitted to the grant-in-aid for the purpose of Automatic Advancement Scheme, Career Advancement Scheme and Pension.

(2) No suit or any other proceedings shall be maintained or continued in any Court against the Government or any person or authority whatsoever for extending the benefit of Automatic Advancement Scheme, Career Advancement Scheme and Pension by reckoning the service rendered by any employee of private aided educational institutions prior to the date of approval of appointment in a post duly admitted to grant-in-aid.

(3) No Court shall enforce any decree or order directing to count the service rendered in any unaided or aided post prior to the date of approval of his appointment in a post duly admitted to grant-in-aid for the purpose of extending the Automatic Advancement Scheme, Career Advancement Scheme and Pension.

Apart from the disinclination of the petitioner to place before this Court any statutory or legal basis for his claims, prima-facie in view of the provisions of Sections 2 and 3 of the Act, the petitioner's claim that entirety of his service from 1-6-1964 should be counted for the purpose of granting pensionary benefits cannot be accepted.

On the analysis above, the writ petition is dismissed. However, there shall be no order as to costs.

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(GODA RAGHURAM, J)

17-11-2004.

Msr.

To

1 The District Educational Officer, Adilabad.
2 The Secretary-cum-Correspondent, Nirmal English Medium

High School, Nirmal, Adilabad District.
3 The Accountant General, Indian Audit & Accounts Department,
Near Secretariat, A.P., Hyderabad.
4 Director of School Education,
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5 The Principal Secretary, School Education Department,
A.P. Secretariat, Hyderabad.

6. 2CCs to G.P. for School Education,High Court Bldgs.,Hyd(OUT)

7. 2CD copies

THE HON'BLE SRI JUSTICE GODA RAGHURAM

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17-11-2004.

(Msr)